

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

withhold
31912

FILE:

B-219622

DATE: August 8, 1985

MATTER OF:

Avantek, Inc.

DIGEST:

1. Bid containing protester's standard F.O.B. origin term is nonresponsive to IFB requiring bid on F.O.B. destination basis.
2. A nonresponsive bid may not be corrected through mistake in bid procedure and late modification of a bid may not be accepted if the bid as originally submitted is nonresponsive.
3. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.
4. Where it is clear that a protest is without legal merit, GAO will dismiss protest without holding a conference which would serve no useful purpose.

Avantek, Inc. (Avantek), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 10-0058-5 issued by the National Aeronautics and Space Administration (NASA) for wideband fiber optical terminal equipment.

We summarily dismiss the protest without obtaining an agency report from NASA, since it is clear from material furnished on behalf of Avantek that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1985).

NASA rejected Avantek's low bid because, among other things, it stated that "Prices are F.O.B. factory, Milpitas, California," whereas the IFB required delivery on an F.O.B. destination basis. Avantek argues that it inadvertently included Avantek's standard commercial terms and conditions in its bid, that these terms were immaterial and not intended to be part of the bid, and that it should be permitted to correct the mistake in its bid.

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We have held that where a solicitation requires that bids be submitted on an F.O.B. destination basis, a bid which specifies that delivery will be F.O.B. origin is non-responsive. Barber-Colman Company, B-203132, Aug. 11, 1981, 81-2 C.P.D. ¶ 122. By offering the equipment on an F.O.B. origin basis instead of an F.O.B. destination basis, Avantek shifted the risk of loss or damage to the supplies while in transit to the government, a burden which the IFB's F.O.B. destination clause specifically placed on the contractor. Since the exception taken by Avantek to the delivery requirement of the IFB is a material one affecting the substance of the bid, Avantek's bid was properly rejected as nonresponsive. A&H Precision Products, Inc., B-206932, Apr. 16, 1982, 82-1 C.P.D. ¶ 354.

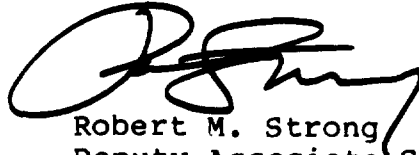
Avantek's contention that a mistake contributed to the nonresponsiveness of its bid affords no basis for relief because the mistake-in-bid procedures are not available to cure a nonresponsive bid. Empire Generator Corporation, B-205194, Mar. 1, 1982, 82-1 C.P.D. ¶ 176. A bid that is nonresponsive may not be corrected after bid opening, since the nonresponsive bidder would receive the competitive advantage of choosing to accept or reject the contract after bids are exposed by choosing to make its bid responsive or not. Valley Forge Flag Co., Inc., B-216108, Sept. 4, 1984, 84-2 C.P.D. ¶ 251.

Avantek also contends that, after bid opening, NASA should have accepted its revised bid, with the offending standard terms deleted, as a late modification of an otherwise successful bid which makes its terms more favorable to the government, in accordance with 48 C.F.R. § 14.304-1(d) (1984). However, a late modification of a bid may only be accepted if the bid as originally submitted is responsive. Siemens-Allis, Inc., B-218054, Feb. 8, 1985, 85-1 C.P.D. ¶ 169.

Avantek states that if NASA disqualifies its bid, NASA will spend at least 10 percent more in awarding the contract to the next lowest bidder. Although rejection of Avantek's bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted, even though it would result in savings to the government, since such acceptance would compromise the integrity of the competitive bidding system. See Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267.

Avantek has requested a conference. Because it is clear from Avantek's initial submission that this protest is without merit, we are dismissing the protest without a

conference, as it would serve no useful purpose. RAD Oil
Co., Inc., B-209047, Oct. 20, 1982, 82-2 C.P.D. ¶ 352.

A handwritten signature in black ink, appearing to read "R. Strong", with a large, stylized initial "R" and a long, sweeping underline.

Robert M. Strong
Deputy Associate General Counsel